

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOSEPH L. MIZZONI,

Plaintiff,

vs.

STATE OF NEVADA, *et al.*,

Defendants.

3:11-cv-00186-ECR-VPC

**ORDER**

On May 11, 2011, the court dismissed plaintiff's Fourteenth Amendment claims with prejudice and granted him leave to file an amended civil rights complaint regarding his retaliation claim (docket #10). Plaintiff filed a notice of appeal (docket #13), which was dismissed for lack of jurisdiction (docket #16). Plaintiff has now filed a motion for district judge to reconsider screening order (docket #19).

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9<sup>th</sup> Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

1 Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order  
2 for the following reasons:

3 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly  
4 discovered evidence which by due diligence could not have been  
5 discovered in time to move for a new trial under Rule 59(b); (3) fraud  
6 (whether heretofore denominated intrinsic or extrinsic),  
7 misrepresentation, or other misconduct of an adverse party; (4) the  
8 judgment is void; (5) the judgment has been satisfied, released, or  
9 discharged, or a prior judgment upon which it is based has been reversed  
10 or otherwise vacated, or it is no longer equitable that the judgment should  
11 have prospective application; or (6) any other reason justifying relief  
12 from the operation of the judgment.

13 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*  
14 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party  
15 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior  
16 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),  
17 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9<sup>th</sup> Cir. 1987). Rule 59(e) of the Federal  
18 Rules of Civil Procedure provides that any “motion to alter or amend a judgment shall be filed no later  
19 than 28 days after entry of the judgment.” Further, a motion under Fed. R. Civ. P. 59(e) “should not be  
20 granted, absent highly unusual circumstances, unless the district court is presented with newly  
21 discovered evidence, committed clear error, or if there is an intervening change in the controlling law.”  
22 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9<sup>th</sup> Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,  
23 1255 (9<sup>th</sup> Cir. 1999).

24 In the Screening Order of May 11, 2011, the court dismissed plaintiff’s Fourteenth  
25 Amendment claims because the statute of limitations had expired (docket #10). First, plaintiff filed his  
26 motion for reconsideration on July 22, 2011—about seventy-five days after the court’s Screening Order.  
Thus, he filed his motion well beyond the twenty-eight-day timeframe required by Rule 59(e).  
Moreover, plaintiff has failed to make an adequate showing under either Rule 60(b) or 59(e) that this  
court’s order dismissing his Fourteenth Amendment claims should be reversed. Accordingly, plaintiff’s  
motion for district judge to reconsider Screening Order (docket #19) is denied.

**IT IS THEREFORE ORDERED** that plaintiff's motion for district judge to reconsider Screening Order (docket #19) is **DENIED**.

**IT IS FURTHER ORDERED** that plaintiff is expressly cautioned that failure to file an amended complaint in conformance with this court's Screening Order dated May 11, 2011 will result in the dismissal of this action with prejudice.

Edward C. Reed.  
UNITED STATES DISTRICT JUDGE